

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Richmond Division)**

ERIC C. WILSON,

Petitioner,

v.

Case No. 3:10cv536
(Related Case to *Danial Williams v. Helen Fahey, Chair of the Virginia Parole Board*, Civ. No. 3:09-769; *Derek Tice v. Gene Johnson*, Civ. No. 3:08-69; *Joseph J. Wilson, Jr. v. Helen Fahey, Chair, Virginia Parole Board*, Civ. No. 3:10-505)

W. STEVEN FLAHERTY,
Superintendent, Virginia Department
of State Police

Respondent.

**MOTION TO STAY & ABEY
PETITION FOR WRIT OF HABEAS CORPUS
TO PERMIT EXHAUSTION OF MERITORIOUS CLAIM**

COMES NOW Eric C. Wilson, by and through counsel, and hereby moves this Court, pursuant to *Rhines v. Weber*, 544 U.S. 269 (2005), for an Order staying and abeying consideration of the claims asserted in his Petition for Writ of Habeas Corpus, filed on this day, to permit the timely filing and disposition in Virginia state courts of one unexhausted claim alleged in said petition. In support of this motion, Mr. Wilson states as follows:

1. On this day, Mr. Wilson has filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. 2254. In his petition, Mr. Wilson alleges that he is actually innocent, and his convictions and sentences are marred by harmful and prejudicial constitutional error.

2. The petition pleads three claims. Two of the claims (claims #1-2) are fully exhausted, and there are no other state remedies available for those claims. Claim 3 is based significantly upon events which just became known in May, 2010. While it is not clear to Mr. Wilson whether state remedies are available for consideration of that claim, it is also not clear that such remedies are unavailable. Thus, as soon as possible after the filing of his Petition for Writ of Habeas Corpus in this court, Mr. Wilson will file a state habeas petition asserting this claim.

3. As pleaded, Mr. Wilson's petition is a "mixed" petition. While governing law forbids this Court from adjudicating a "mixed" petition, *Rose v. Lundy*, 455 U.S. 509 (1982), controlling law permits the Court to stay consideration of the petition and abey the proceeding to allow for the timely exhaustion of an unexhausted claim. *Rhines v. Webber*, 544 U.S. 269 (2005).

4. The Supreme Court has made clear that "stay and abey" orders are appropriate where the petitioner shows "good cause for his failure to exhaust, his unexhausted claims are potentially meritorious, and there is no indication that the petitioner engaged in intentionally dilatory litigation tactics." 544 U.S. at 278.

5. The circumstances of this filing satisfy the *Rhines* standard and compel "stay and abey." The facts that largely underlie Petitioner's one unexhausted claim came to light only two months ago. As set forth in the petition, the indictment of former Detective Ford, and the character of the charges brought therein, was unknown and not reasonably available to Mr. Wilson prior to announcement of the indictment. Since the publication of these serious corruption charges, Mr. Wilson has been diligent to investigate additional facts and circumstances that support claim #3. Simply put, there was no claim #3 to exhaust until the

Ford indictment, and Mr. Wilson will file his state habeas petition alleging that claim as soon as possible following the filing of this proceeding.

6. Moreover, claim #3 sets forth serious allegations that go to the factual integrity of Mr. Wilson's convictions. The claim alleges that former Detective Ford purposefully prosecuted Mr. Wilson, and Mr. Wilson's co-defendants, all the while knowing that they are innocent, and did so to save his career. It is certainly the case that, as things stand today, this claim is "potentially meritorious."

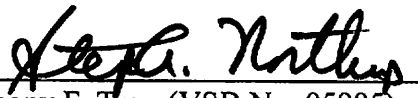
7. Finally, there can be no allegation that Mr. Wilson has engaged in dilatory tactics in failing to present this claim previously. Mr. Wilson desires a prompt determination of the lawfulness of his convictions. He spent eight and one-half years in prison for a crime he did not commit, and currently is subject to onerous restrictions as a convicted violent sex offender that greatly limit his freedom. As far as he is concerned, the sooner these claims can be adjudicated, the better.

WHEREFORE, and for other reasons that come to the attention of the Court, Mr. Wilson requests that the Court enter an Order staying this proceeding to permit the timely consideration of claim #3 in state court proceedings.

Dated: July 30, 2010

Respectfully submitted,

ERIC C. WILSON

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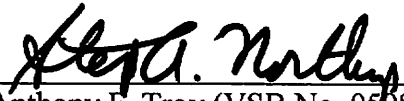
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Counsel for Petitioner

Certificate of Service

I hereby certify that on July 30, 2010, as a courtesy I have sent the foregoing to the Counsel for the Respondent in the related case of *Danial Williams v. Helen Fahey, Chair of the Virginia Parole Board* (Civ. No. 3:09-769), at the following address:

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